IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4747 OF 2005

Imtiyaz Babu Khan ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.S.V.Kotwal for the Applicant
Mr.K.V.Saste,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 12,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for the State. An offence has been registered against the Applicant and other co-accused punishable under Sections 395,397,427 of I.P.C.

2. F.I.R. was registered at the instance of one Suresh Kumar Chauhan. The case of the first informant is that he was driving a truck loaded with iron rods towards Mumbai. At about 2.00 a.m. on 1st November 2004, near Bhiwandi by-pass Road, the truck was intercepted by one Sumo Vehicle. As the Sumo suddenly came in the way of the truck, the first informant was required to apply brakes as a result the truck dashed against the Sumo. There were 8 persons in the said Sumo vehicle. Out of them four came out and assaulted the complainant and the cleaner by saying that they will have to pay necessary amount on account of damage caused to the car. The case of the first informant is that he along with the said

cleaner were taken into Sumo jeep. After sitting in Sumo vehicle, the first informant suggested to the persons present in the vehicle that they should go to the police chowkey where settlement can be arrived at. However, the persons in the said Sumo declined to do so and the first informant and the cleaner were taken near Shahapur. The allegation is that both of them were tied to a tree by using a rope and a sum of Rs.10,000/- from the pocket of the first informant was taken by the accused persons and they went away in the Sumo vehicle. Thereafter, the cleaner freed himself and helped the first informant to untie the rope. They took a lift in a tempo and came near the spot where the truck was standing. They noticed that the accused were trying to ply the truck. However, the engine was not starting as the battery was discharged. Therefore, the first informant and the cleaner went to the police chowkey and returned to the spot with police on a motor cycle. When the first informant went to the spot accused were trying to tow the truck by using a crane. The Sumo was followed by the crane which was towing the truck. When the police tried to intercept, a dash was given by the Sumo vehicle to the motorcycle, as a result of which the Police Constable and the first informant fell down. The allegation is that they caught the three accused on the spot and other five accused ran away.

3. The Advocate for the Applicant submitted that no specific

role has been ascribed to the Applicant. He stated that the real dispute started when the truck gave dash to the Sumo vehicle. He pointed out that if the statement of the driver of the crane is considered, the version of the first informant becomes doubtful. He pointed out that there is no recovery of any incriminating article at the instance of the Applicant. He, therefore, submitted at after completion of investigation the Applicant is entitled to be enlarged on bail.

4. The learned A.P.P. pointed out the material against the Applicant. The learned A.P.P. pointed out that a walkman was recovered from the custody of the Applicant. He submitted that considering the serious nature of the crime, the Applicant cannot be enlarged on bail.

5. I have considered the submissions. Even according to the F.I.R. as the Sumo vehicle came infront of the jeep, the truck dashed against the Sumo vehicle. The accused persons in the Sumo demanded money from the first informant and the cleaner for causing damage to the Sumo vehicle. Thereafter, when the first informant and cleaner were taken in the Sumo vehicle, it is the first informant who suggested that they should go to the police station and settle the dispute. According to the first informant, the persons in the Sumo informed him that the owner of the vehicle is at Shahapur and they will have to take them to Shahapur. It is to be noted

here that the driver of the crane is one of the witnesses whose statement has been recorded. Though the driver of the crane has stated that when the truck was being towed police came there, he has not stated anything about the dash given by the Sumo to the motorcycle of the police which was in front of the Sumo vehicle. It is material to note that no specific role has been ascribed to the Applicant by any of the witnesses. These are the factors which are very material for considering the prayer for bail.

6. The Applicant is in custody from 1st November 2004. There is no recovery of any incriminating article made at the instance of the Applicant. In my view, as investigation is completed, the Applicant is entitled to be enlarged on bail subject to stringent conditions.

7. Hence I pass the following order :

i) The Applicant shall be enlarged on bail in connection with C.R.No. I-99/2004 registered at Bhiwandi Taluka Police Station, subject to furnishing a personal bond of Rs.25,000/- (Rupees twenty five thousand) with one or two local sureties in the like amount.

ii) Bail is granted subject to the condition that the Applicant will attend the concerned police station on every

Sunday at 11.00 a.m. till the conclusion of trial.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) The Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE